**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| DDR HOLDINGS, LLC, | ) | Civil Action No. _________ |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| PRICELINE.COM LLC, | ) | JURY TRIAL DEMANDED |
| Defendant. | ) | |
| ____________________________________ | ) | |

**COMPLAINT**

DDR Holdings, LLC ("DDR") alleges:

1. DDR is a Georgia limited liability company with its principal place of business in Dunwoody, Georgia. DDR is in the business of developing, managing, and licensing intellectual property for syndicated e-commerce, including related patents and other intellectual property.

2. DDR owns all right, title, and interest in U.S. Patent 7,818,399, issued October 19, 2010 (attached as Exhibit A), U.S. Patent 8,515,825, issued August 20, 2013 (with certificate of correction, attached as Exhibit B), U.S. Patent 9,043,228, issued May 26, 2015 (with certificate of correction, attached as Exhibit C), and U.S. Patent 9,639,876, issued May 2, 2017 (today) (attached as Exhibit D), including the right to sue for any patent infringement.

3. Priceline.com LLC is a Delaware limited liability company with its principal place of business in Norwalk, Connecticut.

4. Daniel D. ("Danny") Ross is the managing director of DDR and a co-inventor of the patents-in-suit here. In 1997, Mr. Ross co-founded a company called

Nexchange Corporation with his son, Mr. D. Delano ("Del") Ross, Jr.; Danny became chairman of Nexchange and Del became CEO. Both Rosses and several others who worked at Nexchange are listed co-inventors on the above-listed patents. The above-listed patents stem from a common ancestor application filed September 17, 1999, which in turn claimed the benefit of a provisional application filed September 17, 1998. The Rosses and the other co-inventors assigned the patent rights to Nexchange.

5. Nexchange began operation in Fall 1998, received millions of dollars of venture financing, and at its height employed over 100 people. Nexchange achieved significant early success. Nexchange's "reach" (an Internet term defining the number of potential visitors who saw Nexchange "stores") soared to more than half of all Internet users. Despite its early success, Nexchange failed a few years later, from lack of later-round financing after the bursting of the "Internet bubble."

6. Nexchange began winding down in late 2000. In 2001, as Nexchange had substantially completed the winding down of operations and sale of its assets, Danny Ross acquired the patent rights (then consisting of one unexamined patent application) from Nexchange by agreement with Nexchange's secure creditors in exchange for consideration including Mr. Ross's personal services. In 2003, Danny Ross signed an agreement with Nexchange's creditors by which he providing additional consideration and obtained an acknowledgement that he had completed his duties under the 2001 agreement and thus an acknowledgment of the assignment. Danny Ross then assigned the patent rights to a company he and Del Ross had formed, DDR. Accordingly, DDR owns all the patents listed in paragraph 2 above.

7. In January 2006, DDR sued nine defendants on two patents that are parents to the patents-in-suit here, in Civil Action No. 2-06-CV-00042 in the Eastern District of Texas ("the Texas Suit"). In 2010, DDR amended that lawsuit to add the '399 Patent listed above and a tenth defendant. In October 2012, the Texas Suit went to a trial against two defendants, and DDR obtained a jury verdict that the independent claims of the '399 Patent were infringed and were not invalid. The district court later denied a series of defense motions for judgment as a matter of law and entered judgment in June 2013. In December 2014, the Federal Circuit Court of Appeals affirmed the judgment as to the '399 Patent, including holding that the '399 Patent contained patent-eligible subject matter under Section 101 of the Patent Act, that the '399 Patent's claims were not indefinite and thus complied with Section 112, paragraph 2, of the Patent Act, and that the '399 Patent was infringed. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014).

8. After the district court judgment, and with knowledge of the defenses and prior art cited at trial, the Patent Office issued the '825 Patent in suit. After the Federal Circuit affirmance, and with knowledge of its opinion, the Patent Office issued the '228 and '876 Patents-in-suit.

9. The four patents-in-suit are related. Specifically, the '876 Patent is a continuation of the '228 Patent, which is in turn a continuation of the '825 Patent, which is in turn a continuation of the '399 Patent.

10. As the Federal Circuit held (referring to the '399 Patent and its parent): "Each of these patents is directed to systems and methods of generating a composite

web page that combines certain visual elements of a 'host' website with content of a third-party merchant. For example, the generated composite web page may combine the logo, background color, and fonts of the host website with product information from the merchant. The common specification of the patents-in-suit explains that prior art systems allowed third-party merchants to 'lure the [host website's] visitor traffic away' from the host website because visitors would be taken to the third-party merchant's website when they clicked on the merchant's advertisement on the host site. The patents-in-suit disclose a system that provides a solution to this problem (for the host) by creating a new web page that permits a website visitor, in a sense, to be in two places at the same time. On activation of a hyperlink on a host website — such as an advertisement for a third-party merchant — instead of taking the visitor to the merchant's website, the system generates and directs the visitor to a composite web page that displays product information from the third-party merchant, but retains the host website's 'look and feel.' Thus, the host website can display a third-party merchant's products, but retain its visitor traffic by displaying this product information from within a generated web page that 'gives the viewer of the page the impression that she is viewing pages served by the host' website." 773 F.3d 1248-49 (citations omitted).

11. DDR settled with all ten defendants in the Texas Suit, some before the trial, one after jury selection, one before Federal Circuit oral argument, and the last on January 30, 2015, after the Federal Circuit opinion. Over time, DDR has reached license agreements with four additional companies without litigation.

12. On August 5, 2015, DDR's counsel wrote to Priceline bringing to Priceline's attention the '399, '825, and '228 Patents-in-suit, providing Priceline with copies of those patents, and advising that DDR had studied Priceline's "affiliate program, the Priceline Partner Network," and wished to discuss a license.

13. Representatives of Priceline and DDR engaged in discussions and further correspondence in Fall 2015, January 2016, Summer 2016, and December 2016, at which point Priceline cut off discussions, telling DDR that Priceline was not open to compromise discussions, did not want to talk further to resolve the matter, did not need to discuss the merits further, and was officially refusing DDR's offer to discuss a license.

14. During the discussions, DDR responded on the merits to all substantive points raised by Priceline to support Priceline's allegation that Priceline did not need a license from DDR. DDR's responses were specific and made clear that Priceline's comments did not make sense. DDR's responses included claim charts demonstrating infringement examples, provided under non-disclosure agreement. Priceline did not identify any error in DDR's reasoning as to any of DDR's responses.

15. On April 13, 2017, DDR's counsel wrote a letter to Priceline advising of the impending issuance of the '876 Patent, providing a copy of the claims and post-allowance notices from the Patent Office, and inviting Priceline to settle the matter amicably. Priceline did not respond.

16. Priceline's responses to DDR concerning the '399, '825, and '228 Patents-in-suit were and are pretextual, and Priceline did not have any good faith belief in the validity of its excuses.

17. Priceline infringes all claims of the '876 Patent (claims 1 and 11 are independent claims). Priceline infringes all claims of the '228 Patent (claims 1 and 9 are independent claims). Priceline infringes all claims of the '825 Patent (claims 1, 11, and 17 are independent claims). Priceline infringes claims 1, 3-11, 13-16, and 18 of the '399 Patent (claim 1 is an independent claim).

18. Priceline directly and literally infringes the above-described claims through its above-described affiliate program. The specific characteristics of Priceline's affiliate program that cause infringement of the asserted patents are as follows: Priceline acts as an "outsource provider" described in the patents. Priceline owns or controls a computer server system that serves displayable web pages with commercial opportunities. Priceline's web pages offer to the public "commerce objects" – *e.g.*, a list with descriptions of hotel rooms, flights, or rental cars – associated with buying opportunities of multiple merchants – *e.g.*, hotels or hotel chains, airlines, or car rental companies. When Internet visitors activate a link, using a computer (*e.g.*, desktop or laptop) or portable computing device (phone, tablet, etc.) on a source web page controlled by a "host," *i.e.*, a Priceline customer, the Internet visitor's computer is redirected to a URL at which Priceline's server system is accessible. In response to activation of that link, Priceline's server system then serves to the visitor's device instructions for displaying a composite web page. Priceline's server system works for source web pages of multiple different customers at once by recognizing the source page on which the link was activated based on data contained in the activated URL. The composite page is dynamically assembled thereafter, depending on information from

the source page. Priceline's web pages contain information about the "commerce object" and make the product available for sale to the user. Priceline's server system ensures that many visually perceptible elements that visually correspond to the source page are displayed to the user, such as by directing the visitor's device to download through the Internet certain stored data (*e.g.*, HTML and CSS instructions or image files) defining the visually perceptible elements.

19. Notably, the composite page (that Priceline causes to be served under the affiliate program) has the same overall appearance of a web page of Priceline's customer. The Priceline Partner Network website touts the customizable nature of its affiliate program and brags that it offers "control over the look, feel and function of our platform. We adapt to fit your brand." Priceline announces prominently in HTML meta description tags, designed to be found by search engines and displayed in search engine results, that its Priceline Partner Network relates to "CSS Styled booking engines [that] are custom branded with your own look and feel."

20. Like the DDR '399 Patent described in the Federal Circuit's opinion, the Priceline Partner Network generates a composite web page that combines certain visual elements (*e.g.*, logo, background color, and fonts) of a "host" website (a Priceline affiliate) with content of a non-Priceline merchant. Priceline's system shares the advantage over prior art systems that allowed third-party merchants to "lure the host website's visitor traffic away" from the host website; rather, upon activation of a hyperlink on the host website, instead of taking the visitor to the merchant's website, Priceline's system generates and directs the visitor to a composite web page that

displays product information from the third-party merchant but retains the host website's overall appearance, which gives the viewer of the page the impression that he or she is viewing pages served by the host's website.

21. Each of the following statements related to dependent claims are true in at least some instances: Priceline's server system contains instruction or image files in a memory or storage device coupled to the server. Priceline's system assembling the composite web page is a web server serving the Priceline page. The visually perceptible elements include URLs or hyperlinks referencing the customer's website or specific pages thereof. The commerce object may include a "catalog" with subsidiary web pages, *e.g.*, pages for different room types within each hotel. The Priceline system allows users to search for products matching specific parameters, including through a browser on the user device, and including within the "catalog" when available. The commerce object may refer to a multitude of products of a merchant. When an Internet user makes a purchase at Priceline's page, Priceline shares a portion of the revenue with Priceline's customer on whose source page the Internet user activated the URL, *e.g.*, by paying a commission pursuant to a contract associated with the "affiliate program." Priceline's computer system facilitates automatic payment to Priceline's customer. Priceline's websites include URLs that when activated place the data representing the commerce object into a virtual shopping cart. Priceline's websites accept billing information and facilitate payment to the merchant. Priceline's use of the visually perceptible elements causes the composite web pages to appear as though they were

generated by their customers' websites. Priceline's web page is "branded" to look like its customer's web page.

22. Although DDR considers Priceline's infringement to be direct infringement, in the alternative DDR alleges that Priceline also either directly infringes or intentionally, knowing of the patents, induces infringement, by directing its subcontractors such as hosting providers or content delivery networks to serve the web pages of the sorts described above, and by providing in its marketing materials and above-referenced websites encouragement and direction to its customers to place links in their pages customized to interface with Priceline's servers and to operate under Priceline's affiliate program. Also in the alternative, DDR alleges that by serving pages in combination with its customer's servers and their user's computers, Priceline contributes to infringement of its customers or its customers' users by providing access to the above-described server system, which forms a material part of the invention that has no substantially non-infringing use, knowing that its components were designed for an infringing system.

23. Priceline's website and webpages formed by the infringing server system are publicly accessible over the Internet and available to Internet users in the State of Delaware, and Priceline offers its affiliate program to customers in Delaware. Priceline has provided services to customers in this district and facilitated the sales of goods and services of Priceline's customers to a large number of residents of this district. Priceline has earned a significant quantity of revenue – upon information and belief, tens of millions of dollars – from transactions having connection with the United States

effectuated through the Internet, through operation of the above-referenced and infringing websites and programs.

24. This civil action for patent infringement arises under the patent laws of the United States, 35 U.S.C. §1, *et seq.*, and more particularly 35 U.S.C. §271.

25. This Court has subject-matter jurisdiction over this case under, at least, 35 U.S.C. §281 and 28 U.S.C. §§1331, 1332, 1338(a), 2201, and 2202.

26. This Court has personal jurisdiction over Priceline because it is a Delaware company and resides in this district; because, under at least 10 Del. C. §3104 and the United States Constitution, Priceline conducts a substantial, systematic, and continuous business of soliciting, offering, and selling services in this judicial district, from which it derives substantial revenue; and because this action arises from the Priceline's commission of patent infringement in this judicial district by, among other things, intending to serve Delaware affiliates by offering Priceline services to customers, business affiliates, and partners located in Delaware, and by assisting both Delaware and non-Delaware customers and affiliates to serve web pages to Delaware users.

27. This District is a proper venue to resolve this case under, at least, 28 U.S.C. §§1391 and 1400. DDR is bringing action against other defendants simultaneously.

28. Notwithstanding awareness of DDR's patent rights, and notwithstanding the judgment in the Texas Case and opinion of the Federal Circuit holding the '399 Patent infringed and not invalid, Priceline continued or began activities falling within the scope of at least one claim of the patents-in-suit, without a justifiable basis for

believing that the claims are invalid or not infringed, and offered false and contrived excuses for disregarding the patents. Priceline's patent infringement is willful.

29. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, DDR hereby respectfully requests a jury trial on all issues and claims so triable.

WHEREFORE, DDR respectfully requests judgment as follows:

A. A judgment that Priceline has infringed (or in the alternative contributorily infringed or actively induced others to infringe) the four patents-in-suit;

B. A judgment that Priceline's infringement of the patents-in-suit is willful;

C. Orders preliminarily and permanently enjoining Priceline, its officers, directors, servants, managers, employees, agents, successors, and assignees, and all persons in concert or participation with them, from infringing, contributorily infringing, or actively inducing others to infringe the patents-in-suit.

D. An award, pursuant to 35 U.S.C. §284, to DDR of all damages sufficient to compensate for Priceline's infringement of the patents-in-suit, but no less than a reasonable royalty for use made by Priceline of the patented invention, together with pre-judgment and post-judgment interest and costs, for the time periods from the issue date of each infringed patent through the time of award;

E. An award of increased damages, pursuant to 35 U.S.C. §284, in an amount not less than three times the amount of actual damages awarded to DDR, by reason of Priceline's willful infringement of the patents-in-suit.

F. An award of reasonable attorneys' fees, pursuant to 35 U.S.C. §285, as this is an exceptional case.

G. An award to DDR of such other relief as this Court deems just and proper.

Dated: May 2, 2017

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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